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(32749)

No. 372

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

UNITED STATES OF AMERICA,

Petitioner,

v.

THE CITY OF NEW YORK.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

November 7, 1949.

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Opinions Below

The opinions of the District Court (R. 85-87, 97-105) are reported *sub nom. United States* v. *68,716 Square Feet of Land, etc.*, in 79 F. Supp. 438. The opinion of the Court of Appeals (R. 109-111) is reported in 175 F. 2d 75.

Jurisdiction

The judgment of the Court of Appeals was entered on May 27, 1949 (R. 111). A petition for rehearing was denied on July 13, 1949 (R. 115). The petition for a writ of certiorari was filed on October 6, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

Question Presented

Whether the Court of Appeals properly dismissed this equity suit brought in the federal courts to restrain the collection of municipal taxes.

Statutes Involved

The statutes involved are set forth in the Appendix, *infra*, pp. 9-10.

Statement

Hospital property in the City of New York, owned by the Lebanon Hospital Association, was assessed by the City for real estate taxes after the United States had acquired a leasehold interest therein in condemnation proceedings (R. 7-13). The property was assessed for the period of its temporary occupancy by the Government, which used the condemned property as a military hospital (R. 17).

Under a stipulation between the United States and the Lebanon Hospital Association, the United States agreed to pay any legally assessed taxes which should become liens upon the property as an element of just compensation (R. 14).

The United States filed a petition in the pending condemnation proceedings for a declaration that the taxes assessed against the property for the period of the Government's occupancy were invalid (R. 7, 14, 16-17, 19-20). The City moved to dismiss the petition on the grounds that the Court lacked jurisdiction of the subject-matter and that the petition failed to state a claim on which relief could be granted (R. 71-78).

The District Court found that the property was entitled to exemption under the State Tax Law, and accordingly

declared that the taxes were illegal (R. 86-87, 104). The Court of Appeals reversed and dismissed the petition (R. 109-111).

Argument

1.

This suit to enjoin the collection of municipal taxes is essentially an equity suit. *Great Lakes Co.* v. *Huffman,* 319 U. S. 293, 300 (1943); *Meredith* v. *Winter Haven,* 320 U. S. 228, 231 (1943). It is not maintainable in the federal courts because a plain, adequate and complete remedy was available at law in the state courts. (Judicial Code, § 267, 28 U. S. C. § 384, in effect at the time of the filing of the petition in the District Court but since repealed [Act June 25, 1948, c. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948]. However, the equitable principle incorporated in the statute has survived its repeal.)

This principle has long been deemed to have peculiar force in cases where it is sought to enjoin the collection of municipal taxes in the federal courts. *Matthews* v. *Rodgers,* 284 U. S. 521, 525 (1932). See also, *Stratton* v. *St. L. S. W. Ry. Co.,* 284 U. S. 530 (1932); *Thompson* v. *Magnolia Co.,* 309 U. S. 478 (1940); *Great Lakes Co.* v. *Huffman, supra; Meredith* v. *Winter Haven, supra.*

In *Great Lakes Co.* v. *Huffman, supra,* the doctrine was enunciated that the policy of refraining from enjoining the collection of state taxes challenged as unlawful, should govern federal courts of equity in refusing in the exercise of their discretion to make a declaration of rights. The Court of Appeals stated in its opinion herein: "It is not denied by the United States that, after the levy of the taxes, a wholly adequate remedy was open to it, directly or through Lebanon, in the state courts" (R. 111). The Court of Appeals dismissed the petition in the case at bar, not because an issue of state law was presented, or because the state law question was doubtful, but because a wholly

adequate remedy was available to the petitioner in the state courts.

The Court of Appeals apparently referred to the remedy of statutory tax certiorari proceedings under the State Tax Law and the New York City Charter, the statutory time for the initiation of which had expired (*infra*, pp. 9-10). Concededly, in addition to the statutory remedy afforded by the law of New York, a declaratory judgment action and equitable remedies are also available in the courts of New York. For the purpose of determining the adequacy of the legal remedy in the state courts, the remedy of a declaratory judgment action is a remedy at law. In determining what is a legal remedy and its adequacy to defeat their equity jurisdiction, "the federal courts are guided by the historic distinction between law and equity in those courts, not by the name given to remedies or to distinctions made between them by the state practice." *Stratton* v. *St. L. S. W. Ry.*, 284 U. S. 530, 534 (1931); *Russell* v. *Todd*, 309 U. S. 280, 286 (1940).

In the case at bar, the adequacy of the remedy was not disputed. The local law remedy, covering the entire case made by the petitioner, was adequate to prevent equitable relief. *Greene* v. *Louis. & Interurban R. R. Co.*, 244 U. S. 499, 520 (1917); *Hillsborough* v. *Cromwell*, 326 U. S. 620 (1946).

The present unavailability of the statutory tax certiorari remedy in the state courts is immaterial. As the Court of Appeals said: "Whether, because of delay, that remedy is not now available is not material, for the United States should never have sought relief in a federal court" (R. 111). This ruling is supported by the decisions of this Court. *Russell* v. *Todd*, 309 U. S. 280, 288, 291 (1939); *Guaranty Trust Co.* v. *York*, 326 U. S. 99, 107, 110 (1945).

The decision of the Court of Appeals is not in conflict with *Hillsborough* v. *Cromwell*, 326 U. S. 620 (1945). In that case, this Court, assuming the availability of a state remedy on the local law question, took the case out of the general rule of *Great Lakes Co.* v. *Huffman*, *supra*, because

of the uncertainty surrounding the local law remedy, and held that the refusal to dismiss the bill was a proper exercise of discretion in view of the exceptional circumstances of the case, arising from local procedural discrimination against the taxpayer (326 U. S., at pp. 626, 629).

Concededly, an equitable remedy and a declaratory judgment action are available in the state courts. The claim in the petitioner's brief that the defense of laches may be raised in an equity suit in the state courts is not tenable.

Lewis v. *City of Lockport,* 276 N. Y. 336 (1938), cited by the petitioner, does not hold that laches is a defense in an action to remove a cloud on title caused by the imposition of illegal taxes. The decision did not turn on the question of laches, in spite of the circumstance that "there was a delay of six or seven years between the confirmation of the assessment and the institution of the action" (p. 343). The Court based its decision on the exclusivity of the statutory remedy, saying that "unless the statutory remedy is exclusive, a property owner may delay many years before instituting action to set an assessment aside as a cloud on title" (p. 343).

Matter of Striker, 23 Hun 647 (1881), aff'd without opin. 85 N. Y. 629 (1881), cited by petitioner, is not pertinent here. The special proceedings to vacate an assessment involved in that case, were barred by the statute of limitations applicable to such special proceedings. Although the court in its opinion refers to laches, it was not an action in equity to remove a cloud on title.

Nor, in view of the want of equity in the cause, would it have been proper to postpone further proceedings in the case until the question of state law had been adjudicated by the highest court of the State. *Matthews* v. *Rodgers,* 284 U. S. 521 (1931; *Meredith* v. *Winter Haven,* 320 U. S. 228 (1943). In *Propper* v. *Clark,* 337 U. S. 472, 492 (1949), this Court expressly rejected the "suggestion that a decision in this case in the federal courts should be delayed until the courts of New York have settled the issue of state law." This Court has repeatedly held that "the

proper procedure is for the federal court to hold the case until a definite determination of the local law can be made by the state courts" where "a federal constitutional question turns on the interpretation of local law and the local law is in doubt." *Hillsborough* v. *Cromwell, supra,* 326 U. S. at p. 628; *Thompson* v. *Magnolia,* 309 U. S. 478 (1940); *Railroad Comm'n* v. *Pullman Co.,* 312 U. S. 496 (1941); *Chicago* v. *Fieldcrest Dairies,* 316 U. S. 168 (1942); *Spector Motor Co.* v. *McLaughlin,* 323 U. S. 101 (1944); *Propper* v. *Clark, supra.* This is "a time-honored canon of constitutional adjudication." *Spector Motor Co.* v. *McLaughlin, supra,* 323 U. S. at p. 105.

Jurisdiction may also be properly retained in the federal courts pending the adjudication of local law questions in the state courts, where a federal question, depending upon the determination of the local law question, remains to be litigated. *U. S.* v. *25.936 Acres of Land, etc.,* 153 F. 2d 277 (C. A. 3, 1946); *U. S.* v. *150.29 Acres of Land, etc., in Milwaukee C., Wis.,* 135 F. 2d 878 (C. A. 7, 1943); *Findley* v. *Odland,* 127 F. 2d 948 (C. A. 6, 1942). Jurisdiction may also be retained in a diversity case. *Green* v. *Phillips Petroleum Co.,* 119 F. 2d 466 (C. A. 8, 1941).

But here no question of federal constitutional law is involved. No federal question remains to be litigated. The single issue in this case is the legality of the municipal taxes. Since local remedies were admittedly available both at law and in equity there was no basis for postponing proceedings in the case.

Nor was the petitioner prejudiced in any way by the failure to postpone proceedings. The condemnation proceeding, in which the petition was filed in the District Court, is still open, and no final adjudication has yet been made therein (R. 98). The only issue left open in the condemnation proceeding is the validity of the real estate taxes in question (R. 15-18).

If the assessment of these taxes should be definitely sustained, they would concededly be paid by the petitioner

as an element of just compensation (R. 15). If, therefore, the petitioner should pursue its remedies in the state courts, the proceedings in the state courts would finally determine the matter. It would then be necessary merely to enter a formal order in order to conclude the condemnation proceeding, upon the basis of the ultimate determination of the New York courts. Under these circumstances, the practical effect of the dismissal of the petition is the same as that of a postponement.

2.

Additional grounds exist for a dismissal of this equity suit to restrain the enforcement of municipal taxes.

(a)

The Government's petition herein contains not a single allegation that as a result of the imposition of the taxes it is in danger of suffering irreparable injury or that such danger is clear and imminent (R. 7-22). The allegations of the petition determine the jurisdiction of the District Court. *Hillsborough* v. *Cromwell,* 326 U. S. 620, 626 (1945); *Hart* v. *B. F. Keith Vaudeville Exchange,* 262 U. S. 271 (1923). This Court has held that equity will not interfere with the enforcement of state laws except "to prevent irreparable injury which is clear and imminent." *A. F. of L.* v. *Watson,* 327 U. S. 582, 593 (1946); *Douglas* v. *Jeannette,* 319 U. S. 157, 163 (1943). The Court of Appeals, therefore, properly directed dismissal of the petition for want of equity in the cause.

(b)

The only issue here is the legality of municipal tax assessments. The mere illegality of a municipal tax is not in itself a ground for federal equity intervention. *Matthews* v. *Rodgers,* 284 U. S. 521 (1931). The Court of Appeals was therefore justified in dismissing the petition on this ground alone.

CONCLUSION

The decision below is correct. There is no conflict. The petition for a writ of certiorari should be denied.

November 7, 1949.

Respectfully submitted,

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APPENDIX

Judicial Code (28 U. S. C. § 384), in effect at the time the petition herein was filed but since repealed (Act June 25, 1948, c. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948), provides:

> "Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate, and complete remedy may be had at law."

The Tax Law of the State of New York (59 McKinney's Consolidated Laws of New York) provides as follows:

"§ 3. Property liable to taxation.

All real property within this state is taxable unless exempt from taxation by law."

"§ 4. Exemption from taxation.

The following property shall be exempt from taxation:

* * *.

Subd. 6. The real property of a corporation or association organized exclusively for * * * hospital * * * purposes, * * * and used exclusively for carrying out thereupon * * * such purposes. * * * "

"The real property of any such corporation not so used exclusively for carrying out thereupon one or more of such purposes but leased or otherwise used for other purposes, shall not be exempt * * *."

"§ 290. Contents of petition.

Any person assessed upon any assessment-roll, claiming to be aggrieved by any assessment for property therein, may present to the supreme court a petition duly verified setting forth that the assessment is illegal * * *."

"§ 295. Appeals.

An appeal may be taken by either party from an order, judgment or determination under this article as from an order, * * *."

The New York City Charter (Williams ed., pp. 33-34) reads as follows:

"§ 163. Application for correction of assessment for taxation.

During the time that the books of annual record of the assessed valuation of real estate are open for public inspection, any person or corporation claiming to be aggrieved by the assessed valuation of real estate may apply for correction of such assessment. * * *"

"§ 164. Procedure on application.

Between the first day of February and the twenty-fifth day of May, the tax commission may itself or by a commissioner or assessor thereunto authorized by the commission, act upon applications, examine applicants under oath and take other testimony. * * *"

"§ 165. Final determination of the tax commission.

The final determination of the tax commission upon any application for the correction of an assessment shall be rendered not later than the twenty-fifth day of May. Otherwise, the assessment objected to shall be deemed to be the final determination of the tax commission."

"§ 166. Certiorari to review final determination of the tax commission.

A certiorari to review or correct on the merits any final determination of the tax commission may be had as provided by law, and if brought to review a determination mentioned in section one hundred sixty-five must be begun before the twenty-fifth day of October following the time when the determination sought to be reviewed or corrected was made."

The above provisions of the New York State Tax Law and New York City Charter were amended, in respects not material to this case, subsequent to the time of the filing of the petition herein. New York Laws 1949, chapters 550, 551.